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NEW YORK, NY 10022

EXAMINER
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ABDI, KAMBIZ

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* HOWARD W. LUTNICK, BIJOY PAUL,  
and MICHAEL SWEETING<sup>1</sup>

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Appeal 2015-002531  
Application 12/406,260  
Technology Center 3600

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Before HUBERT C. LORIN, BIBHU R. MOHANTY, and  
BRADLEY B. BAYAT, *Administrative Patent Judges*.

BAYAT, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellants filed a Request for Rehearing (“Request”) under 37 C.F.R. § 41.52 for reconsideration of our Decision on Appeal mailed February 2, 2017. The Decision affirmed the Examiner’s § 101 Rejection and reversed the Examiner’s § 103 Rejection of claims 1–21, 23–41, and 43–49 on appeal. We have jurisdiction over the Request under 35 U.S.C. § 6(b).

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<sup>1</sup> Appellants identify “CFPH, L.P.” as the real party in interest (Appeal Br. 4).

## ANALYSIS

We note at the outset that a Request for Rehearing “must state with particularity the points believed to have been misapprehended or overlooked by the Board.” 37 C.F.R. § 41.52(a). A Request for Rehearing is not an opportunity to rehash arguments raised in the Briefs. Neither is it an opportunity to merely express disagreement with a decision without setting forth points believed to have been misapprehended or overlooked. Arguments not raised in the briefs before the Board and evidence not previously relied on in the briefs also are not permitted except in the limited circumstances set forth in §§ 41.52 (a)(2) through (a)(4). *Id.*

To the extent Appellants present supplemental or new arguments in the Request, those arguments are untimely and, as such, will not be considered except where the arguments are based on a recent relevant decision of either this Board or a federal court, or on an allegation that the Board’s decision contains an undesignated new ground of rejection. *See id.* *Independent claims 1, 16, 32, and 49*

Turning to the Request, Appellants’ first and third arguments allege that the Office failed to establish a prima facie case under step one and step two, respectively, of the *Alice* framework. Req. Reh’g 2–3; 5–6. In this regard, Appellants contend that there is no “evidence presented regarding the fundamentality or long prevalence of the allegedly abstract idea.” *Id.* at 3.

We are not aware of any controlling precedent that imposes such a requirement, and Appellants have not identified any such precedent. As we indicated in our Decision, the Examiner properly complied with the Office’s Interim Guidance on Subject Matter Eligibility at the time of mailing of the

Answer. Dec. 4–5. The Examiner set forth the statutory basis of the rejection, applied *Alice*’s two-part framework, and sufficiently articulated reasoning in an informative manner, thus, meeting the notice requirement of 35 U.S.C. § 132. Appellants do not maintain that they did not understand the Examiner’s rejection. Therefore, the Examiner established a prima facie case of unpatentability. The burden then shifted to Appellants to rebut the Examiner’s prima facie case.

Appellants’ second and fourth arguments, respectively, contend that the claims pass muster under steps one and two of *Alice*. *Id.* at 3–5; 6–10. Appellants argue that “there is no risk that the claims would preempt all trading using engines.” *Id.* at 5. According to Appellants, the invention is “directed to an improvement in computer-related technology that increases the speed and reduces delays found in conventional trading systems.” *Id.* at 3. Appellants contend that the claims are directed to improvements in technology like the claims in *DDR*, *Enfish*, *Bascom*, *McRO*, *Amdocs*, and *Trading Techs.* *Id.* at 2–10. Appellants argue in particular that the claims fall under the ruling in *Trading Techs. Int’l, Inc. v. CQG, INC.*, No. 2016-1616, 2017 WL 192716 (Fed. Cir. Jan. 18, 2017). *Id.* at 2–3; 7–10.

We disagree.

In *Trading Techs.*, the Federal Circuit affirmed the district court’s holding that the claims were not directed to an abstract idea because the claims required “a specific, structured graphical user interface paired with a prescribed functionality directly related to the graphical user interface’s structure that is addressed to and resolves a specifically identified problem in the prior state of the art.” *Trading Techs.* at \*3. Here, the claims do not

recite a graphical user interface, and thus are readily distinguishable from the claims in *Trading Techs.*

We find the claims on appeal to be more similar to the claims held ineligible in *Accenture Global Services, GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336 (Fed. Cir. 2013).

Each of the independent claims requires an event engine, a matching engine, and a bus that couples the two. More specifically, claims 1, 32, and 49 recite “a data bus,” and claim 16 recites “a communication bus.” Each claim requires that instructions are transmitted through the bus from the event engine to the matching engine.

Our reviewing court addressed similar claim limitations in *Accenture* and found them ineligible under *Alice*. In *Accenture*, the claims recited, *inter alia*, a “server component including an event processor, a task engine and a task assistant” and “wherein the event processor is triggered by application events associated with a change in the information, and sends an event trigger to the task engine.” *Accenture* presented arguments that the claims were directed to a narrow “combination of computer components including an insurance transaction database, a task library database, a client component, and a server component, which includes an event processor, a task engine, and a task assistant” and that “the complexity and detail of the specification demonstrate that the patent is an advance in computer software and not simply a claim to an abstract idea.” *Accenture*, 728 F.3d at 1344. The court rejected *Accenture*’s first argument because “simply implementing an abstract concept on a computer, without meaningful limitations to that concept, does not transform a patent-ineligible claim into

a patent-eligible one.” *Id.* at 1345 (citing *Bancorp Servs., LLC v. Sun Life Assurance Co. of Can.*, 687 F.3d 1266, 1280 (Fed. Cir. 2012)). Regarding preemption, the court held that “Accenture’s attempts to limit the abstract concept to a computer implementation and to a specific industry thus do not provide additional substantive limitations to avoid preempting the abstract idea . . .” *Id.* The court also stated “[r]egarding Accenture’s argument concerning the complexity of the specification, including the specification’s detailed software implementation guidelines, the important inquiry for a § 101 analysis is to look to the claim.” *Id.*

We find the claimed “event engine” and “matching engine” to be analogous to the claimed “event processor” and “task engine” in *Accenture*, respectively. Here, notwithstanding that detailed implementations may be disclosed in certain embodiments of Appellants’ Specification, the claims merely add conventional computer components to well-known business practices. Appellants’ argument that there is no risk of preemption is undermined by the breadth of the claims, which describe the claim elements purely in functional terms. For example, in light of the Specification, the claimed “bus” encompasses any network or component that allows communication between an event engine and a matching engine. *See, e.g.*, Spec. 28, ll. 22–23 (“In some embodiments, communication network 215 may include a data bus. The data bus may allow communication from the event engine to the matching engine.”); Spec. 29, ll. 11–12 (“a data bus may include a communication network that is used to transport information among/between/to/from component(s) of a machine”).

We note the point about pre-emption. Req. Reh’g 5 (“no risk that the claims would preempt all trading using engines”). However, while pre-emption “might tend to impede innovation more than it would tend to promote it, ‘thereby thwarting the primary object of the patent laws’” (*Alice*, 134 S. Ct. at 2354 (citing *Mayo* at 1293)), “the absence of complete preemption does not demonstrate patent eligibility” (*Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015)). While the specific claim limitations may prevent pre-emption of all trading using engines, that does not make the claimed subject matter any less directed to an abstract idea. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015), cert. denied, *OIP Techs., Inc.*, 136 S. Ct. 701, 193 (2015) (“[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.”). Moreover, because we determine the claimed subject matter covers patent-ineligible subject matter, the pre-emption concern is necessarily addressed. “Where a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, [] preemption concerns are fully addressed and made moot.” *Ariosa Diagnostics*, 788 F.3d at 1379.

We note the discussion of delay in the Specification. *See, e.g.*, Spec. 18, ll. 21 (“[d]elay may result in suboptimal trading results”). While some techniques for reducing delay in a system may constitute technological improvements, that is not necessarily true in every case. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir.), cert. denied, 136 S. Ct. 701, 193 L. Ed. 2d 522 (2015) (“relying on a computer to perform

routine tasks more quickly or more accurately is insufficient to render a claim patent eligible”). Here, providing a bus (e.g., network) that transports information between two components of a computer is not even arguably inventive. *Cf. BuySAFE v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (“That a computer receives and sends the information over a network—with no further specification—is not even arguably inventive.”). In fact, transporting information between components of a computer is — by definition — the function of any bus. For example, *Webster’s New World Computer Dictionary* defines “bus” as “[a]n internal electrical pathway along which signals are sent from one part of the computer to another”<sup>2</sup> and defines “data bus” as “[a]n internal electronic pathway that enables the microprocessor to exchange data with random access memory (RAM).”<sup>3</sup> *Cf. Alice*, 134 S. Ct. at 2360 (“Nearly every computer will include a ‘communications controller’ and a ‘data storage unit’ capable of performing the basic calculation, storage, and transmission functions required by the method claims.”); *see also, Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016) (“Nothing in the claims, understood in light of the specification, requires anything other than off-the-shelf, conventional computer, network and display technology for gathering, sending, and presenting the desired information”). In other words, the claimed bus

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<sup>2</sup> Webster’s New World Computer Dictionary (2003) retrieved from <http://search.credoreference.com/content/entry/webstercom/bus/0> (Accessed Apr. 26, 2017)

<sup>3</sup> Webster’s New World Computer Dictionary (2003) retrieved from [http://search.credoreference.com/content/entry/webstercom/data\\_bus/0](http://search.credoreference.com/content/entry/webstercom/data_bus/0) (Accessed Apr. 26, 2017)



operates precisely in its normal, expected manner to transport information. *Cf. DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1258–59 (Fed. Cir. 2014) (finding a computer-implemented method patent eligible where the claims recite a specific manipulation of a general-purpose computer such that the claims do not rely on a “computer network operating in its normal, expected manner”). Accordingly, we find the claimed arrangement of a bus that couples an event engine and a matching engine to be insufficient to root the claimed invention in technology.

Finally, we disagree with Appellants’ argument that our “position would make all claims that touched economics or trading directed to an abstract idea.” Req. Reh’g 2. Our Decision makes no such sweeping holding. Moreover, nothing in our Decision contradicts the Federal Circuit’s statement in *Enfish* that “[s]oftware can make non-abstract improvements to computer technology just as hardware improvements can.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016). Rather, as discussed above, our Decision is based on the particular facts and evidence of record before us in the instant case.

For the forgoing reasons, we deny Appellants’ request as to independent claims 1, 16, 32, and 49.

#### *Dependent claims*

Appellants present separate arguments for the patentability of various dependent claims for the first time in the Request. Req. 10–12.

The Board regulation governing requests for rehearing provides in relevant part:

The request for rehearing must state with particularity the points believed to have been misapprehended or overlooked by the

Board. Arguments not raised, and Evidence not previously relied upon, pursuant to §§ 41.37, 41.41, or 41.47 are not permitted in the request for rehearing except as permitted by paragraphs (a)(2) through (a)(4) of this section.

37 C.F.R. § 41.52(a)(2014). Paragraph (a)(2) provides that upon showing of good cause, a new argument may be presented based on a recent relevant decision of either the Board or a Federal Court. Paragraph (a)(3) provides that new arguments may be presented responding to a new ground of rejection made pursuant to § 41.50(b). Paragraph (a)(4) provides that new arguments may be presented responding to the Board's decision containing an undesignated new ground of rejection.

Appellants have not directed our attention to arguments in its principal briefs on appeal with regards to any of the dependent claims. Indeed, none of the dependent claims were mentioned at all. *See* Reply Br. filed January 7, 2015 at 10–11. Thus, we cannot have misapprehended or overlooked these arguments. Moreover, we did not enter a new ground of rejection, nor have Appellants requested that we denominate our affirmance as a new ground. We note that the Federal Circuit's decision in *DDR* was issued one month prior to the filing of Appellants' Reply Brief. Appellants have provided no explanation as to why the dependent claims could not have been separately argued prior to the Request. Accordingly, neither basis for raising a new argument has been satisfied, and we therefore deny the request for relief on that basis as to the dependent claims.

Thus, we conclude that Appellants have failed to show that the Board misapprehended or overlooked points raised in the appeal or that the Decision to affirm the Examiner was erroneous.

DECISION

To summarize, our decision is as follows:

We have considered the Request for Rehearing.

We deny the request that we reverse the Examiner's rejection under 35 U.S.C. 101 as to claims 1–21, 23–41, and 43–49.

DENIED